IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

Crl.M.C.No. 5699 of 2003(B)

AGAINST THE ORDER DATED 20/11/2003 IN CMP 2299 2003 IN CC.103/2003 of JUDL. MAGISTRATE OF FIRST CLASS-II, HARIPAD

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PETITIONER: COMPLAINANT

C.SURESH RAJ, VALIYAVEETTIL,
MUTHUKULAM VADAKKUM, CHOOLATHERUVU P.O.

BY ADV. SRI.R.RADHAKRISHNAN NAIR
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS: ACCUSED AND STATE

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1. K.BABUKUTTAN,
VALIYAKODUKKAL, MUTHUKKULAM VADAKKU,
CHOOLATHERUVU P.O.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.B.RENJITHKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU,J

Crl.M.C.No. 5699 of 2003

Dated this the 13th day of November,2006

ORDER

Petitioner, who is the complainant in C.C.No. 103/2000 in the file of Judicial First Class Magistrate Court-II, Haripad, with respect to the offence under section 138 of the Negotiable Instrument Act, has sought for setting aside the order of the court below, declining the prayer of the petitioner to reopen the evidence recalling Pw2 and Dw1 for further examination. It is submitted that the cheque is time barred and that the same was issued as a security for an amount of Rs.40,000/- borrowed by another person in 1994 and that the signature appeared in the cheque and the specimen signature given in the bank are different. According to the petitioner/complainant the cheque was dishonoured for want of sufficient funds in the account of the accused and not because of any difference in signature. According to the petitioner/complainant, the accused, at the time of trial when he was examined attempted to prove that the signature in the cheque is different and that the signature is one the accused used to put at the point of time before 1997. Hence, the petitioner filed a petition to recall and examine the Bank manager who was examined as Pw2 and Dw1, the accused.

2. After hearing both sides, the court below dismissed the application on the ground that the petitioner has not mentioned the specific reasons for which he wanted to recall Pw2 and Dw1 who were examined quite long back and that the attempt appeared to be only to protract the trial. It is further seen from the application filed that in the Civil suit, O.S.208/2000, filed by the accused for declaration that he is not liable to pay the amount on the ground of limitation and absence of consideration, the same was decreed in favour of the plaintiff / accused. It is submitted that the appeal is pending over the decision in O.S.208/2000.

3. In the circumstances and in view of the reasons mentioned by the court below, I find that no interference is called for. It cannot be said that the court below has not exercised the discretion in an improper manner.

In the result, the Crl.M.C is dismissed.

K.R.UDAYABHANU, JUDGE

dvs